



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary Martin Mataes Andrew Caye

9 IBIA 196 (03/15/1982)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF MARY MARTIN MATAES ANDREW CAYE

IBIA 81-26

Decided March 15, 1982

Appeal from order denying petition to reopen estate.

Reversed and remanded.

1. Indian Probate: Reopening: Generally

A petition to reopen an Indian estate and its supporting documentation must, to be favorably considered, present some legal theory under which the petitioner might be able to make a claim against the estate and any facts required to support that theory.

2. Indian Probate: Adoption: Generally

Proof of adoption in Indian probate proceedings under the jurisdiction of the Department of the Interior is governed by Federal statute as expressed in 25 U.S.C. § 372a (1976).

3. Constitutional Law: Generally

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to determine the constitutionality of a statute enacted by Congress.

APPEARANCES: Steven C. Moore, Esq., for appellant Joseph Pierre; James H. Moylan, Esq., for appellee Jean Sustine Morigeau Mullen. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On February 20, 1981, the Board of Indian Appeals received a notice of appeal from Joseph Pierre (appellant) that had been filed

with Administrative Law Judge Alexander H. Wilson on February 9, 1981. 1/ Appellant sought review of an order entered by Judge Wilson on January 9, 1981, denying a petition to reopen the estate of Mary Martin Mataes Andrew Caye, deceased Flathead allottee No. 2117. Decedent died on October 5, 1976, leaving a will. Her will, however, was disapproved by Administrative Law Judge David J. McKee on November 22, 1977, on the grounds that the devisee under the will, decedent's husband, Peter Caye, had predeceased decedent. Because there was no surviving lineal descendant who fell within the anti-lapse provisions of 43 CFR 4.261, Judge McKee ordered that decedent's trust estate pass to her niece, Jean Sustine Morigeau Mullen (appellee), under the Montana laws of intestate succession.

On November 17, 1980, appellant petitioned to reopen this estate, alleging that he was decedent's adopted son. The petition further alleged that appellant was within the 3-year period for reopening an estate established in 43 CFR 4.242(a) and that he met the requirements for seeking reopening under that regulation. 2/ The petition was accompanied by several affidavits stating that the affiants knew the personal circumstances of appellant and decedent.

On January 9, 1981, Judge Wilson denied the petition to reopen on the grounds that appellant's alleged adoption had taken place in 1948, after the passage of the Act of July 8, 1940, 54 Stat. 746, 25 U.S.C. § 372a (1976), but was not executed in accordance with that Act. 3/ Judge Wilson based this conclusion on the findings of Examiner of Inheritance J. M. Mandell in the 1955 probate of the estate of

1/ The date stamp affixed by the office of the Administrative Law Judge incorrectly reads Feb. 9, 1980.

2/ Judge Wilson made no explicit findings in regard to whether appellant did meet these requirements. The fact, however, that he reached the merits of appellant's argument is an implicit acknowledgment that the petition was properly before him.

3/ Section 372a reads in pertinent part:

"In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption-

"(1) Unless such adoption shall have been--

"(a) by a judgment or decree of a State court;

"(b) by a judgment or decree of an Indian court;

"(c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose; or

"(d) by an adoption in accordance with a procedure established by the tribal authority, recognized by the Department of the Interior, of the tribe either of the adopted child or the adoptive parent, and duly recorded in a book kept by the tribe for that purpose * * *."

Peter Caye, Probate No. D-643-55 (1793-55), appellant's putative adoptive father. Although Mary Caye stated at the 1955 hearing that she and Peter Caye had adopted appellant, the examiner could not locate any records of the adoption as required by 25 U.S.C. § 372a (1976), and therefore found that appellant was not the adopted son of Peter and Mary Caye. This finding, however, was not necessary in the probate of Peter Caye's estate since he had executed a valid will devising all of his property to his wife.

Discussion, Findings, and Conclusions

[1] Reopenings of probate proceedings within 3 years of the date of a final decision by an Administrative Law Judge are governed by 43 CFR 4.242(a) through (c). In particular, section 4.242(c) provides that the Administrative Law Judge shall reopen the estate and reconsider the decision "[i]f the petition appears to show merit." The regulations do not require that a petition be sufficient to prove the petitioner's case on reopening. Instead they attempt to ensure that persons affected by the decision, but without notice of the original proceedings, have an opportunity to present their case to the Administrative Law Judge. ^{4/} It is necessary, however, that the petition and supporting documentation present some legal theory under which the petitioner might be able to make a claim against the estate and any facts required to support that theory.

[2, 3] Petitioner here presents several legal theories for upholding his adoption. None of these theories, however, appears to comport with the requirements of 25 U.S.C. § 372a (1976), the Federal statute governing proof of adoption in Indian probate proceedings under the jurisdiction of the Department. To avoid this deficiency, petitioner argues that section 372a is unconstitutional and therefore inapplicable to this case. He then recites several state law doctrines that might recognize his adoption in the absence of the Federal statute. Petitioner fails to recognize that the Department of the Interior, as part of the executive branch of Government, is not the proper forum to determine the constitutionality of a statute enacted by Congress. See, e.g., William Adolf Yonkee, 54 IBLA 232 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Consequently, the Board has no authority to consider the petitioner's arguments concerning the constitutionality of section 372a and therefore remains bound by the statute.

Petitioner has not alleged that he can present evidence of adoption sufficient under section 372a. The petition taken as a whole, however, raises a reasonable possibility that he might be able to present such evidence. Accompanying the petition to reopen is an affidavit made

^{4/} Any alleged defects in the notice of the original probate proceeding are cured through this regulatory provision allowing persons who did not receive notice an opportunity to petition to reopen the estate.

by Margaret Friedlander in which she states that, at the request of the Law and Order Committee of the Confederated Salish and Kootenai Tribes and the tribal court, she visited decedent in 1974 to inquire about appellant. Ms. Friedlander states that when decedent said that she wanted appellant to continue living with her, a written copy of this statement was made, signed with decedent's mark, and placed in the records of the Confederated Salish and Kootenai Tribes. The nature of this document is not clear from the affidavit. The Board will, therefore, remand the case to the Hearings Division of this Office to allow petitioner an opportunity to produce this writing for a determination as to whether it constitutes proof of adoption in accordance with 25 U.S.C. § 372a (1976).

The January 9, 1981, order denying rehearing is therefore reversed and this case is remanded to the Hearings Division of this Office for assignment to an Administrative Law Judge for a further evidentiary hearing.

//original signed
Jerry Muskrat
Administrative Judge

We concur:

//original signed
Franklin D. Arness
Administrative Judge

//original signed
Wm. Philip Horton
Chief Administrative Judge